

state or condition constituting an element of the crime charged or a defense thereto.” Fed. R. Evid. 704(b). Accordingly, lay witnesses will not be permitted to offer an opinion as to whether defendant was sane or insane at the time of the offenses.²

IT IS THEREFORE ORDERED that defense counsel must limit his inquiry of any lay witnesses to observations of defendant’s behavior only; no witness will be permitted to state an opinion or inference as to whether the defendant did or did not have the mental state of condition constituting an element of the crime charge or of a defense thereto. Such ultimate issues are matters for the trier of fact alone. Fed. R. Evid. 704(b).

DATED this 12th day of February, 2009.



CLAIRE V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT

² The Court further notes that all of the cases cited by defendant in support of his argument that lay witnesses are permitted to express an opinion as to the defendant’s sanity pre-date the amendments to the Federal Rules of Evidence.